

State education battle will test justices' mettle when dealing with lawmakers

What if the 2013 Legislature and the state's new governor do nothing of substance to correct the state's decades-long failure to fully fund education and meet the requirements of the state constitution?

PETER CALLAGHAN; STAFF WRITER

Published: Jan. 6, 2013 at 12:05 a.m. PST— Updated: Jan. 6, 2013 at 10:52 a.m. PST

[1 Comment](#)

What if the 2013 Legislature and the state's new governor do nothing of substance to correct the state's decades-long failure to fully fund education and meet the requirements of the state constitution?

That is no longer an academic question as the Legislature seems headed for its traditional standoff between liberals and conservatives.

The political right says increased revenue is not needed and that the state should fund education first and then let all other needs and services fight over the remainders. The left says it would be immoral to further cut social programs, natural resources and even higher education to meet the demands of the state Supreme Court in its Jan. 5, 2012, ruling on *McCleary v. State of Washington*.

Legislative Democrats say increased revenues are needed so as to increase funding for education without making cuts to other programs, and they quote outgoing Gov. Chris Gregoire, who proposed higher taxes in her 2013-15 budget plan. Legislative Republicans say the public doesn't want higher taxes, and they quote Gov.-elect Jay Inslee whose campaign rhetoric claimed that more revenue will not be needed once his miraculous fiscal management takes hold.

It isn't just about money. Even supporters of increased state support want it to be combined with further reforms of how education is delivered and managed. At the same time, lawmakers have to reduce reliance on local school levies, which have been used to make up for shortfalls in state money but do so in an unfair way.

No one says no way, of course. They all pay lip service to their love of education and their oaths to follow the constitution. But a lot of electeds think the Supreme Court can't make them do anything because of that whole separation of powers thing.

The justices must feel they were being pretty understanding of financial realities by setting 2018 as the ultimate deadline for meeting the constitution's demand to amply fund education.

But knowing human nature, they also made sure lawmakers and governors didn't think they could wait until the last day of school in 2018 to do anything. That's why the court demanded "real and measurable progress" each year between now and then, and were unhappy to see little of that in the state's first progress report to the court.

If the next report is equally disappointing, if the Legislature and new governor essentially tell the court "make me," what can the court do to enforce its orders in McCleary?

Few lawmakers understand the issues surrounding education and education funding as well as House Majority Leader Pat Sullivan does, and the Covington Democrat fears the state is facing a "constitutional crisis" over school funding. Since the Supreme Court has never tried anything like this before, no one is sure what that will look like.

In a brief to the court on what its continuing jurisdiction should look like, the lead attorney on the winning side argued that "separation of powers ... does not give legislators a 'free pass' to violate court rulings or constitutional rights."

Thomas Ahearne then gave the court some ideas as to how it might compel/encourage action by the Legislature and the governor:

- "Impose contempt sanctions and fines against recalcitrant officials."
- "Prohibit state payments for other specific expenses or line items until the court's constitutional ruling is obeyed (e.g., nullify state payments for utilities in the O'Brien & Cherberg office buildings, for any legislators' transportation expenses, for legislative or staff salaries/expenses, etc.)."

- “Order the Legislature to fund specific education amounts (e.g., the various underfunding amounts specified by the state’s own studies).”
- “Prohibit funding for less than 100 percent of students in a given program or grade level (e.g., funding full-day K for less than 100 percent of kindergarten students).”
- “Order the sale of state property to fund compliance.”
- “Issue a writ of mandamus to the Legislature to compel performance.”

Aggressive suggestions all, and indicative that the folks who brought the McCleary suit are not going quietly into the night. Winning the case is meaningless unless they also win better state funding.

Does the Supreme Court have the nerve to do more than author tough-sounding opinions?

Peter Callaghan: 253-597-8657
peter.callaghan@thenewstribune.com
blog.thenewstribune.com/politics
@CallaghanPeter

Read more here: <http://www.thenewstribune.com/2013/01/06/2425436/state-education-battle-will-test.html#storylink=cpy>